

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Bamas-Jacques, et al.

Examiner: SAIDHA, Tekchand

Art Unit: 1652

Application No.: 10/603,282

Filed: June 25, 2003

Title: NOVEL VARIANTS OF THE PAPM  
POLYPEPTIDE OF BACTERIA OF THE  
STEPTOMYCIN GENUS

### REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(b)-(d)

Sir:

Responsive to the Determination of Patent Term Adjustment posted on the Patent Application Information Retrieval System (PAIR) as of October 20, 2009, the issue date of U.S. Patent No. 7,604,970 and in light of the recent ruling in *Wyeth v. Dudas*, No. 07-1492, slip op. (D.D.C. Sept. 30, 2008) the Patentees submit this Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(b)-(d).

This application is not subject to a terminal disclaimer.

U.S. Patent No. 7,604,970 issued on October 20, 2009. This request is being submitted within two months of the issue date of U.S. Patent No. 7,604,970, and complies with the deadline specified in 37 C.F.R. 1.705(d). In addition, given the recent ruling in *Wyeth*, which was decided on September 30, 2008, the Patentee could not have raised this issue prior to payment of the issue fee. Thus Patentees contend this request is timely.

The data available on PAIR indicates that U.S. Patent No. 7,604,970 has been granted 1532 days of Patent Term Adjustment. Patentees submit that, due to the recent *Wyeth* decision, the correct Patent Term Adjustment should be 1817 days. Patentee, therefore requests that U.S. Patent No. 7,604,970 be granted an additional 285 days of patent term.

Statement of the Facts and Explanation of Calculation

For purposes of this request and in keeping with the explanation provided in *Wyeth*, Patentees will refer to the "A delay" as examination delay under 37 C.F.R. 1.703(a). In the "A delay" the Patent Office delayed prosecution 669 days by issuing the first communication more than 14 months from filing or August 25, 2004 to June 25, 2006 (the beginning of the period of "B delay"); with an additional 863 days of delay up to the mailing of the office action on November 4, 2008 not being counted due to overlap, see below). **Thus the total PTO "A delay" is 669 days.**

Delay due to applicant consists of 65 days in responding to the November 4, 2008 Restriction Requirement on April 10, 2009. **Thus total applicants delay is 65 days.**

The Patent Office delayed issuance of the patent by more than three years, and the period of "B delay" commences on June 25, 2006 (three year anniversary of the filing date) and ends on October 20, 2009 (the issue date of US Patent No. 7,604,970) **Thus the period of "B delay" is 1213 days by applicant's calculation.**

Therefore, the Patent Office was responsible for a total of  $669 + 1213 = 1,882$  days of delay and the applicant is responsible for 65 days of delay. Applicants believe the proper patent term adjustment under *Wyeth* is  $1882 - 65 = 1,817$  days.

In light of the foregoing, the Patentees respectfully request that an additional 285 days of Patent Term Adjustment be added to the patent term for Patent Office delay, resulting in a total Patent Term Adjustment of 1817 days.

The Commissioner is authorized to charge the \$200.00 fee set forth in §1.18(e) required by 37 C.F.R. §1.705(b)(1) to Deposit Account No. 18-1982. The Commissioner is also authorized to charge any additional fees required by this paper or credit any overpayment to Deposit Account No. 18-1982.

Respectfully submitted,

  
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